

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

UNITED STATES OF AMERICA

Case No. 1:18-cr-270-TWP-MJD-01

v.

SEAN HOWARD

ORDER ON MOTION FOR
SENTENCE REDUCTION UNDER
18 U.S.C. § 3582(c)(1)(A)
(COMPASSIONATE RELEASE)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A), and after considering the applicable factors provided in 18 U.S.C. § 3553(a) and the applicable policy statements issued by the Sentencing Commission,

IT IS ORDERED that the motion is:

☐ DENIED.

☒ DENIED WITHOUT PREJUDICE.

Following a plea of guilty, the Court sentenced Defendant Sean Howard on December 8, 2021 to the custody of the Bureau of Prisons for a term of 180 months on each of Counts 1 and 2 (Felon in Possession of a Firearm) to be served concurrently and 12 months sentencing enhancement pursuant to 18 U.S.C. § 3147, to be served consecutive to Counts 1 and 2 for a total of 192 months imprisonment. (Dkt. 158). On January 13, 2022, Defendant filed a *pro se* Motion for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A).¹

As an initial matter, the Court finds that the Motion filed is premature. Defendant complains about the transmission and risk of COVID-19 at the Clark County Jail. (Dkt. 172).

¹ Although Defendant's direct criminal appeal is currently pending, the Court has jurisdiction to deny Defendant's motion. *United States v. Barrett*, 834 F. App'x 264, 265 (7th Cir. 2021).

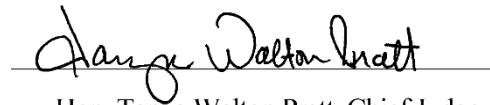
He argues "[g]uards have reported a 'short supply' of protective equipment for all parties (deputies, staff and inmates) facing this pandemic at Clark County Jail." *Id.* at 5. Defendants detainment at the Clark County Jail was pretrial detention only, and since filing his Motion, he has been designated by the Bureau of Prisons and is presently housed at FCI Gilmer in West Virginia. The Defendants complaints concerning conditions at the Clark County Jail do not present an extraordinary and compelling reason to justify compassionate release.

In addition, the Motion does not provide the Court with sufficient information to determine whether it should grant compassionate release under § 3582(c)(1)(A) based on Defendants health concerns. Specifically, while Defendant contends that he suffers from certain medical conditions that increase his risk of experiencing severe symptoms if he contracts COVID-19, he does not explain whether he received or been offered the COVID-19 vaccine, which would reduce his risk of contracting COVID-19 and reduce the risk of serious illness if he did contract COVID-19. Such information is pertinent to the Court's evaluation of whether Defendant has presented an "extraordinary and compelling reason" warranting a sentence reduction under § 3582(c)(1)(A)(i). *See United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021) ("[F]or the many prisoners who seek release based on the special risks created by COVID-19 for people living in close quarters, vaccines offer far more relief than a judicial order. A prisoner who can show that he is unable to receive or benefit from a vaccine may still turn to this statute, but, for the vast majority of prisoners, the availability of a vaccine makes it impossible to conclude that the risk of COVID-19 is an 'extraordinary and compelling' reason for immediate release The federal judiciary need not accept a prisoner's self-diagnosed skepticism about the COVID-19 vaccines as an adequate explanation for remaining unvaccinated when the responsible agencies all deem vaccination safe and effective.").

Accordingly, Defendant's motion, Dkt. [172], is **denied without prejudice**. If Defendant wishes to renew his Motion, he may do so by completing and returning the attached form motion. (Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(1)(A) (Compassionate Release) (Pro Se Prisoner)). Among other things, the form requires Defendant to explain whether he has received or been offered the COVID-19 vaccine.

IT IS SO ORDERED.

Dated: 2/9/2022

A handwritten signature in black ink, reading "Tanya Walton Pratt", is written over a horizontal line.

Hon. Tanya Walton Pratt, Chief Judge
United States District Court
Southern District of Indiana

Distribution:

Sean Howard
Reg. No. 16532-028
FCI Gilmer
Federal Correctional Institution
P.O. Box 6000
Glenville, WV 26351

All Electronically Registered Counsel

United States District Court

_____ Southern District of Indiana _____

Case No. _____

(write the number including letters of your criminal case)

UNITED STATES OF AMERICA

V.

**MOTION FOR
SENTENCE REDUCTION
PURSUANT TO
18 U.S.C. § 3582(c)(1)(A)
(COMPASSIONATE RELEASE)
(Pro Se Prisoner)**

(write your name here)

NOTICE

Federal Rule of Criminal Procedure 49.1 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

I. MOTION

I hereby move the court for a reduction in sentence (compassionate release) pursuant to § 603 of the First Step Act of 2018 and 18 U.S.C. § 3582(c)(1)(A).

Indicate the reasons for your motion, select all that apply:

- ☐ I have been diagnosed with a terminal illness.
- ☐ I have a serious physical or medical condition, that substantially diminishes my ability to provide self-care within the environment of a correctional facility, from which I am not expected to recover.
- ☐ I have a serious functional or cognitive impairment that substantially diminishes my ability to provide self-care within the environment of a correctional facility, from which I am not expected to recover.
- ☐ I have deteriorating physical or mental health because of the aging process that substantially diminishes my ability to provide self-care within the environment of a correctional facility, from which I am not expected to recover.
- ☐ I am (i) at least 65 years old; (ii) am experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) have served at least 10 years or 75 percent of my term of imprisonment, whichever is less.
- ☐ The caregiver of my minor child or children has died or become incapacitated and I am the only available caregiver for my child or children.
- ☐ My spouse or registered partner has become incapacitated and I am the only available caregiver for my spouse or registered partner.
- ☐ I meet *all* the following criteria:
 - I am 70 years or older;
 - I have served 30 years or more of imprisonment pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which I am imprisoned; and
 - I have been determined by the Director of the Bureau of Prisons not to be a danger to the safety of any other person or the community, as provided under section 3142(g).
- ☐ Other: _____

II. MOVANT'S INFORMATION

Name

Prisoner ID #

Bureau of Prisons Facility

Institutional Address

III. SENTENCE INFORMATION

Date of sentencing:

Term of imprisonment imposed:

Approximate time served to date:

Projected release date:

Length of Term of Supervised Release:

IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES

WARNING: 18 U.S.C. § 3582(c)(1)(A) allows you to file this motion after you have “fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” Your motion may be denied if do not meet these criteria.

Have you submitted your request for a sentence reduction to the warden of the institution where you are incarcerated? ☐ Yes (Date submitted: _____) ☐ No

If no, explain why not:

It has been 30 days since your request was received by the Warden and the Warden has not responded to your petition. ☐ Yes ☐ No

Was your request denied by the Warden? ☐ Yes (Date denied: _____) ☐ No

Have you received a final administrative denial from either Bureau of Prisons General Counsel or the Director of the Bureau of Prisons? ☐ Yes ☐ No

V. STATEMENT SUPPORTING MOTION

Briefly describe the reasons supporting your motion. If you have checked “other” as your reason above, please describe your circumstances and how they apply here. Explain whether your circumstances were known to the court at the time of sentencing. Attach additional sheets if necessary, along with any relevant exhibits (to include medical records, if seeking release based on a medical condition).

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Please describe your proposed release plans (employment, medical needs, housing, and financial resources).

VI. Medical Information

(Please fill out this section if seeking a release based on a medical condition, if not, please skip to section VII)

List any medical diagnoses, if any, that are the basis for your motion.

Will you require ongoing medical care if you are released from prison? ☐ Yes ☐ No

Have you received the COVID-19 vaccine (mark "yes" even if you have received only the first shot)? ☐ Yes ☐ No

If yes, when did you receive the vaccine? _____

If no, have you been offered the vaccine and refused it? ☐ Yes ☐ No

If yes, explain why you refused the vaccine. _____

Do you have health insurance? ☐ Yes ☐ No

If yes, provide name of insurance company and policy number. If no, how do you plan to pay for your medical care?

If no, are you willing to apply for government services (i.e. Medicaid/Medicare)? ☐ Yes ☐ No

Do you have copies of your medical records documenting the condition(s) for which you are seeking release? ☐ Yes ☐ No

If yes, please include them with your motion. If no, where are the records located?

Are you currently prescribed medication in the institution? ☐ Yes ☐ No

If yes, list all prescribed medication, dosage, and frequency.

Do you require durable medical equipment (e.g. wheelchair, walker, oxygen, prosthetic limbs, hospital bed)? ☐ Yes ☐ No

If yes, list equipment.

Do you require assistance with self-care such as bathing, walking, toileting? ☐ Yes ☐ No
If yes, please list the required assistance and how it will be provided.

Do you require assisted living? ☐ Yes ☐ No
If yes, please provide address of the anticipated home/facility and source of funding to pay for it.

Do you have primary care arranged in the community? ☐ Yes ☐ No

Provide name and address of your primary care physician.

Are the people you are proposing to reside with aware of your medical needs? ☐ Yes ☐ No

Do you have other community support that can assist with your medical needs? ☐ Yes ☐ No
Provide names, ages, and their relationship to you.

Will you have transportation to and from your medical appointments?

☐ Yes ☐ No

Describe method of transportation.

VII. RELEASE PLAN

Provide proposed address where you will reside if released from prison.

Provide name and phone number of property owner or renter where you will reside if released from prison.

Provide names, ages, and relationship to you of any other residents living at the above listed address? (If the resident is a minor, do not provide the minor's full name; provide only initials.)

Do the residents of the home know you are proposing to reside with them?

☐ Yes ☐ No

Are they supportive of your request?

☐ Yes ☐ No

Are you physically and mentally able to maintain employment?

☐ Yes ☐ No

Have you secured employment?

☐ Yes ☐ No

Provide name and address of employer and job duties.

VIII. MOVANT'S SIGNATURE

Sign and date the motion.

Date

Movant's Signature

Print Name